

Attorney Docket No.: J6855(C)  
Serial No.: 10/730,709  
Filed: December 8, 2003  
Confirmation No.: 3982

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

In response to advisory action mailed on April 22, 2009, please enter the following Pre-Appeal Brief Request for Review on the above-identified application as follows. A Notice of Appeal is filed herewith. Because this Request is limited to five (5) pages, the arguments here do not represent all of Applicants' objections to the office action. Applicants reserve the right to raise additional arguments on appeal, including arguments not presented in this request. The Commissioner is hereby authorized to charge any additional fees, which may be required to our deposit account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18; C.F.R. §1.136.

**Remarks/Arguments** begin on page 2 of this paper.

## **REMARKS**

Reconsideration and withdrawal of the examiner's rejections under 35 USC § 103, is respectfully requested in view of the following remarks. The applicant would like to thank the examiner for her time and kind cooperation in this matter.

### **35 USC §103**

The examiner has maintained the rejection of claims 1-4, 12, 14, 15 and 18 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,092) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644).

The examiner asserts that it would have been obvious to combine the bicarbonate and acid in the same chamber when in an anhydrous composition of Lentini, et al., because it has been disclosed in the art that the two components do not react in a dry state and the two components have been disclosed by the art in combination in anhydrous skin care compositions, as supported by Farrell, et al.

The examiner further asserts that it would have been obvious to one of ordinary skill in the art to have used a combination of organophilic clays in the compositions of Lentini, et al., and Farrell, et al., motivated by the desire to incorporate a rheology modifier suitable for cosmetics that thickens the compositions as desired and acts as a biocidal agent and remove the need for other biocidal agents that may cause adverse reactions, as disclosed by Guilbeaux.

The examiner asserts in regards to claims 12 and 14, normally, changes in result effective variables are not patentable where the difference involved is one of degree, not of kind; experimentation to find workable conditions generally involves the application of no more than routine skill in the art. See MPEP 2144.05. It would have been obvious to one of ordinary skill in the art to use a particular particle size motivated by the desire to obtain a composition with optimal efficacy when the components are mixed and react with one another. Applicants respectfully traverse these rejections.

Applicants respectfully submit that a proper prima facie case under § 103(a) is not made out with respect to amended claim 1 at least because the disclosure of Lentini, et al., in view of

Farrell, et al., and Guilbeaux fails to disclose a first component in a dispersed phase capable of chemically reacting with a second component and wherein both the first and second components are contained in a first chamber, (i.e., a single chamber).

Lentini, et al., relate to a self-foaming system having two components that are maintained in separate containers or separate compartments in the same container so that the components produce carbon dioxide when they commingle with each other upon being dispensed from their individual containers or compartments. See col. 4, lines 17-19. In another example of Lentini, et al., an anhydrous product contained in a sachet containing the (reactive) components of the system can be added to a bath (col. 3, lines 48-53). The skilled person reading Lentini, et al., would understand that the sachet must be a “unitary package with chambers” separately containing each of the acid and bicarbonate so as to prevent their premature reaction with each other prior to being added to a bath.

The examiner asserts this interpretation is not correct. In response, applicants respectfully submit that the meaning of “sachet” must be gleaned by the skilled person from the overall disclosure of Lentini. The skilled person would interpret the phrase “For example, the present invention may be in the form of a sachet containing the components of the system that is added to a bath of water” (see col. 3, lines 48-53), in conformity with the phrase “the two reactive compounds can be dispensed from physically separate packages or from a unitary package with chambers (col. 4, lines 17-20). Applicants respectfully submit that the skilled person would therefore understand “sachet” to have the characteristics referred to in col. 4, lines 17-20 in support of applicants’ previous analysis of Lentini and in distinct contrast to the examiner’s interpretation.

Farrell, et al., relates to a wiping article containing an effervescent cleanser composition held within a unitary pouch (abstract). Farrell, et al., teaches that the blend must be an anhydrous dry powder ostensibly to avoid any premature reaction prior to the user applying the later wetted wiping article to the skin (col. 1, lines 40-41). Farrell, et al., teaches away from reducing the degree of intimate contact of the dry reactive materials by suspending them in the anhydrous carrier required in instant claim 1(c) because Farrell teaches that the desired result of the rapid effervescence created by the intimate blend being contacted with water is the production of “copious” lather. In other words, the skilled person would not have been motivated to reduce the

intimate contact of the dry powder in Farrell, et al., by suspending such powder in an inert medium.

Guilbeaux relates to a thickened organic composition having two organophilic clays separately providing viscosity building and biocidal activity (see abstract). Applicants respectfully submit that the skilled person would not combine Farrell, et al.'s, teaching of an intimate quick reacting mixture with Guilbeaux's organic clays for the reasons stated above regarding quick reaction to produce copious lather.

The examiner has maintained the rejection of claims 10 and 11 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,092) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Gentile, et al., (US 6,161,729). Applicants respectfully traverse the rejection.

As discussed previously, Gentile, et al., relates to a dual chamber dispenser and contains no disclosure regarding the contents of the dispenser. Applicants respectfully submit that Gentile, et al., does not remedy the deficiencies of Lentini, et al., Farrell, et al., and Guilbeaux with respect to claims 10 and 11 which depend from claim 1.

The examiner has maintained the rejection of claims 5-6 and 8 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,029) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Hall, et al., (US 5,316,054). Applicants respectfully traverse this rejection.

As discussed previously, Hall, et al., relates to a self-contained package for housing dispensing and diluting concentrated liquid. Applicants respectfully submit that Hall, et al., does not remedy the deficiencies of Lentini, et al., Farrell, et al., and Guilbeaux with respect to claims 5-6 and 8 which depend from claim 1.

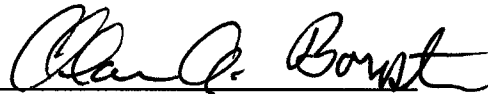
The examiner has maintained the rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Lentini, et al., (US 6,177,092) in view of Farrell, et al., (US 6,063,390) and Guilbeaux (US 4,929,644) as applied to claims 1-4, 12, 14, 15 and 18 in further view of Pettengill (US 5,020,694). Applicants respectfully traverse this rejection.

Pettengill discloses multi-cavity dispensing containers but says nothing about the composition contained therein. Pettengill therefore fails to remedy the deficiencies of Lentini, et al., Farrell, et al., and Guilbeaux with respect to claim 9 which depends from claim 1.

### **CONCLUSION**

In light of the above remarks, applicants submit that the claims now pending in the present application are in condition for allowance. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alan A. Bornstein", written over a horizontal line.

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